

**Exhibit F**

**Declaration of Susan Ansel**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Promotion of Competitive Networks	)	WT Docket No. 99-217
in Local Telecommunications	)	
	)	
Wireless Communications Association	)	
International, Inc. Petition for Rulemaking to	)	
Amend Section 1.4000 of the Commission's	)	
Rules to Preempt Restrictions on Subscriber	)	
Premises Reception or Transmission Antennas	)	
Designed to Provide Fixed Wireless Services	)	
	)	
Cellular Telecommunications Industry	)	
Association Petition for Rulemaking and	)	
Amendment of the Commission's Rules	)	
To Preempt State and Local Imposition of	)	
Discriminatory and/or Excessive Taxes	)	
And Assessments	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications	)	
Act of 1996	)	
	)	
Review of Section 68.104 and 68.213 of	)	
The Commission's Rules Concerning	)	CC Docket No. 88-57
Connection of Simple Inside Wiring to	)	
the Telephone Network	)	

**DECLARATION OF SUSAN ANSEL  
IN SUPPORT OF FURTHER COMMENTS OF  
THE REAL ACCESS ALLIANCE**

I, Susan Ansel declare as follows:

1. I submit this Declaration in support of the Further Comments of the Real Access Alliance. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.
2. I am a Vice President with Gables Residential ("Gables"). I have a B.A. from DePauw University, Greencastle, Indiana. I have worked in the real estate industry for eighteen years and

have had some responsibilities associated with the multi-family industry for all of that time. I am currently responsible for ancillary services nationwide for Gables.

3. Gables is a Multi-family REIT. Gables is based in Atlanta, Georgia and currently operates in Georgia, Florida, Tennessee and Texas. Gables owns 83 communities that comprise approximately 24,800 units and manages a total of approximately 40,000 units, including third-party owned units. Eleven of these communities of these buildings have more than one telecommunications provider.

4. It is very important for Gables to accommodate residents' requests for any additional or alternative services offered by competing local exchange companies, because customer service is a core fundamental of our business strategy. Our residents typically sign six-month leases. It is very easy for a resident to demonstrate their unhappiness with services offered at our properties. As an operating company we can not afford to deliver bad or out-dated services to our residents as they have many opportunities to choose our competitors. That is why it is extremely problematic when we grant telecommunications providers access to our buildings and the providers, as has often been the case, provide poor quality service or fail to live up to the terms of our agreements with them.

5. Gables has been offered and signed exclusive agreements in each of its service areas including Florida, Georgia, Tennessee and Texas. We have not experienced a difference in contracts based upon class of property or demographics, primarily because of the consistency of our portfolio. Providers who have requested exclusive access agreements typically offer video services or a combination of video and data services. Gables has signed exclusive agreements with franchise service providers, private cable operators, digital broadcast service providers and high-speed data service providers. Providers typically request or demand the exclusive agreement so as to allow them an extended period of time without competition to earn a return on the investment in infrastructure costs. The infrastructure costs of this kind of service typically includes inside wiring, intra-building wiring and electronics. The fact that service providers are willing to pay for the infrastructure costs is a benefit to the owners. The ability to offer exclusive agreements allows owners to consider a much larger group of competitive providers. If owners could not sign exclusive agreements, it is unlikely that private cable operators or DBS operators would enter into the market. Franchised cable operators have a much larger base of clients upon which to spread infrastructure costs and would likely be the only group willing to provide

services on a non-exclusive basis. The infrastructure costs typically are about \$400-\$500/unit for video inside wiring and intra-building wiring. Typical terms for an exclusive agreement are seven – ten years in length. There is typically a revenue share, per door fee or one-time per subscriber fee paid to the owner in return for the marketing services of the on-site associates.

6. Exclusive agreements in this type of service seem ubiquitous in our markets. Without exclusive agreements, only the franchise providers would be viable alternatives in the market place. Typically it is the competitive cable operator that is innovative and on the leading edge of new technology. The competitive cable operators are typically pushing franchise cable operators to compete with levels of service. DBS operators clearly lead the push for franchise operators to deliver digital tiers of services in our markets.

7. Gables has entered into marketing arrangements primarily with telecom service providers. The terms of these agreements range from three to seven years in length. Some of the contracts have included a thirty-day cancellation clause with no penalty to either party. Some of the contracts include buy-out language if the owner chooses to terminate without cause and the telecom provider has expended significant dollars to wire or build infrastructure on the property that can be removed at the termination of the contract. The marketing agreements typically include a revenue share, per door fee or one-time per subscriber fee to the owner. In many cases the on-site associates of Gables are required to market the services to all new residents and complete and send all new order paperwork for the Telecom provider. Frequently, there are a number of package options available to the residents that the on-site associates need to be familiar with to present to the residents. These packages include a wide variety of services ranging from packages that include a variety of basic telephone service add-ons and DSL to packages which bundle video, voice and data services.

8. Gables has typically entered into preferential marketing agreements with the providers who have delivered the highest quality services to the residents. The revenue share is a motivating factor in an exclusive marketing agreement; however, the quality of services delivered far outweighs any potential revenue component. The advantage of these types of agreements for the provider is the reduction of competition at the point of sale or the time most likely for a new resident to be making a decision about service providers. In addition, since typically an on-site associate is involved in the order taking and marketing of upgraded services,

the provider gets the benefit of face-to-face sales/marketing effort, which they would be unable to provide without the assistance of the on-site sales team.

9. While our access or marketing agreements usually take from 3-6 months to complete in some cases they take longer to complete.

10. In addition to being involved in the marketing process, our on-site associates are often called upon to address critical access issues. For example, at many of our properties where there are multiple telecommunications providers, competitive providers experience difficulty in coordinating their installation and/or connections at the demarcation point and at cross-connects. Whether these issues arise simply due to poor coordination, or due to a lack of cooperation on the part of the particular ILEC, some kind of mediation or involvement by one of our on-site representatives is often necessary to ensure that the issues are resolved with as little disruption of service or inconvenience to our residents as possible. Our ability to engage in this on-site management is critical since poor service, service interruptions and lack of services affect our credibility and relationship with our tenants. Regardless of whether such errors are our fault residents often blame us for them.

**11. Verification**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on January 19, in 2001  
\_\_\_\_\_.

Susan M Ansel  
Susan Ansel

## **Exhibit G**

### **Model License Agreement**

**DRAFT**

**TELECOMMUNICATIONS LICENSE AGREEMENT  
(MULTI-TENANT OFFICE BUILDING)**

**TRANSACTION-SPECIFIC TERMS AND CONDITIONS**

This Telecommunications License Agreement (together with all Exhibits or other attachments hereto, this "**Agreement**") is made as of the Effective Date by and between Licensor and Licensee. Licensee desires access to and use of portions of Licensor's Building for the purpose of providing the Services to Tenants. In consideration of the mutual covenants herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**Article 1—Term Sheet.** The parties agree that the following terms have the precise meanings ascribed to them below whenever used in this Agreement and that each party shall perform as required hereunder. Defined terms used herein include the plural as well as the singular as the context requires. Any defined terms set forth below that are not applicable to a particular transaction should be stricken.

**1.1 "Effective Date":**

\_\_\_\_\_

**1.2 "Licensor":**

a(n) \_\_\_\_\_

Notice Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

**1.3 "Licensee":**

a(n) \_\_\_\_\_

Notice Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

email: \_\_\_\_\_

**1.4 "Building":**

The land and improvements located at and commonly known as

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**1.5 "Building Manager":**

\_\_\_\_\_



**1.6 "Initial Term":**

\_\_\_\_\_  
months/years from and after the Effective Date

**1.7 "Commencement Date":**

\_\_\_\_\_  
days after the Effective Date, or upon completion of installation of the Equipment, whichever event comes first

**1.8 "Extension Term":**

\_\_\_\_ additional \_\_\_\_ ( ) year period(s) after the expiration of the Initial Term

**1.9 "License Fees":**

Licensee shall pay Licensor the License Fees as follows: \_\_\_\_\_

**1.10 "Annual Increase":**

\_\_\_\_\_ percent (\_\_\_\_%)

**1.11 "Default Rate":**

\_\_\_\_\_ percent (\_\_\_\_%)

above the prime rate published in the Wall Street Journal from time to time (or a reasonably comparable rate should the prime rate no longer be published), but under no circumstances higher than the legal rate of interest

**1.12 "Payments":** [STRIKE OR MODIFY AS APPLICABLE] Throughout the Term, from and after the Commencement Date, Licensee must pay Licensor the License Fees in equal monthly installments on the first day of each calendar month in the Term (and a prorated amount for any partial calendar months). The License Fees increase annually during the Term and any Extension Term, effective as of each anniversary of the Commencement Date, by an amount equal to: (a) the Annual Increase; multiplied by (b) the License Fees for the prior calendar year (including the accumulation of prior Annual Increases). Licensee must pay the License Fees to Licensor in advance without demand, offset, abatement, diminution or reduction. If any payment of the License Fees becomes more than \_\_\_\_ ( ) days overdue, then the amount overdue will accrue interest at the Default Rate until paid.

**1.13 "Other Financial Provisions":** See attached Rider, if any.

**1.14 "Due Diligence Period":** [STRIKE IF INAPPLICABLE] From the Effective Date through the Commencement Date (the "**Due Diligence Period**"), Licensee and its agents and other representatives may enter the Building and Premises at all reasonable times approved by Licensor in its reasonable, and upon reasonable prior notice to Licensor, to perform such inspections and to do those things that are reasonably necessary to determine the suitability of the Building and Premises for the Services, all at Licensee's sole expense. Licensee must promptly repair any damage caused by any such inspection and restore the Building and Premises to their condition prior to such inspection. Prior to its entry into the Building and Premises, Licensee must provide Licensor with an insurance certificate, with limits of coverage in the amounts set forth in Section 12 of the General Terms and Conditions, and from an insurer licensed to do business in the state in which the Building is located and reasonably satisfactory to Licensor, naming as additional insureds the Licensor and the additional parties specified in Section 12(b) of the General Terms and Conditions. If the Building or the Premises are not suitable for the Services in Licensee's good faith opinion, then

Licensee may terminate this Agreement by sending written notice of termination to Licensors at any time prior to the expiration of the Due Diligence Period. If Licensee so terminates this Agreement prior to the expiration of the Due Diligence Period, then neither Licensors nor Licensee will have any further obligation or liability to the other under this Agreement (except those which expressly survive any such termination). If Licensee does not so terminate this Agreement prior to the expiration of the Due Diligence Period, then Licensee will be deemed to have waived the right to terminate this Agreement pursuant to this Section 1.14, and to have accepted the condition of the Premises and Building in their "AS IS" condition as of the Effective Date. Licensee is solely responsible for determining all aspects as to the suitability of the Building and Premises for the Services. Licensee will indemnify the Licensors Parties and hold them harmless from all Claims arising from any activities on the Premises by Licensee and its agents and other representatives during the Due Diligence Period. This indemnification will survive any termination of this Agreement.

**1.15 "Term":** This Agreement remains effective for a period of time equal to the Initial Term plus any properly exercised Extension Term, if any, unless sooner terminated pursuant to an express provision hereof (such period of time being referred to as the "*Term*"). Any Extension Term indicated in Section 1.8 above will be properly exercised only by delivery of written notice to Licensors, at least \_\_\_\_\_ ( ) days prior to the expiration of the then-existing Term, of Licensee's election to extend the Term for the applicable Extension Term. Licensee will be deemed to have waived the right to extend the Term for any Extension Term if Licensee is in default under this Agreement, either at the time of exercise or at the commencement of the Extension Term.

**1.16 "Other Terms and Conditions":** The attached Telecommunications License Agreement General Terms and Conditions, and Riders, Schedules and Exhibits thereto, are a part of this Agreement.

**1.17 "Counterparts"** This Agreement may be executed in counterparts and each executed counterpart will be construed to be an original.

[Intentionally Blank]

**TELECOMMUNICATIONS LICENSE AGREEMENT  
(MULTI-TENANT OFFICE BUILDING)**

SIGNATURE PAGE

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be signed by their authorized representatives, in multiple original counterparts, as of the day and year first above written.

**LICENSOR:**

\_\_\_\_\_

a(n) \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

a(n) \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

WAS1 #890560 v4

## General Terms and Conditions

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## TELECOMMUNICATIONS LICENSE AGREEMENT

### GENERAL TERMS AND CONDITIONS

1. Definitions. All capitalized terms in this Agreement shall have the meaning ascribed to them in Exhibit A, unless expressly defined elsewhere in this Agreement.

2. License Grant

(a) Subject to the terms and conditions of this Agreement, and any covenants, conditions and restrictions recorded against the Building, and in consideration of the duties, covenants and obligations of Licensee hereunder, Licensor hereby grants to Licensee a non-exclusive license to install, operate, maintain and remove, at Licensee's sole expense and risk, the Equipment in the Equipment Room, on the Rooftop Space of the Building, and in the Communications Spaces and Pathways, all for the limited purpose of providing the Services to the Tenants (the "Permitted Use"); provided, however, that Licensee shall be responsible for obtaining access to any and all Tenants' premises except to the extent Licensor has right of access to Tenant premises for purposes of installation. The Equipment Room, Rooftop Space and Communications Spaces and Pathways are hereinafter collectively referred to as the "Premises". Licensee shall have the exclusive right to use the Rooftop Space.

(b) Licensor shall have the right to limit the type, size and location of the Equipment located in or on the Building and the Premises. Subject to Licensor's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned, Licensee shall have access to the Communications Spaces and Pathways, for the purpose of installing and maintaining Licensee's cabling and wiring necessary to provide Services to the Tenants.

(c) Licensor, upon \_\_\_\_ ( ) days notice to Licensee, may require that Licensee permanently relocate any or all of the Equipment to another comparable space in or on the Building, or reduce the amount of Rooftop Space available to Licensee if Licensee is not using a portion of the Rooftop Space, provided that such relocation or modification does not substantially change the operation of the Equipment or materially degrade the quality of transmission of the Equipment, and only if Licensor pays any actual, out-of-pocket costs or expenses paid by Licensee to third parties in connection with such relocation or modification. Licensor will permit Licensee to perform a standard cut-over procedure, if required by any relocation of Equipment, which will ensure that the relocated Equipment is operational for Services prior to discontinuing service from the old location. Licensor shall not be responsible for damage to the Equipment or for theft, misappropriation or loss thereof resulting from such relocation.

(d) If, during the License Term, Licensor needs to perform maintenance work to Licensor's Equipment, or repair or replace the Premises ("Premises Work"), Licensee agrees to cooperate and work with Licensor to achieve said Premises Work. Licensor agrees to provide at least \_\_\_\_ ( ) days notice to Licensee of its intention to perform said work; except in the case of emergency Premises Work in which case Licensor shall give as much notice as possible under the circumstances. Such plan may require the relocation of Equipment at Licensee's cost and expense or Licensee's installation of temporary equipment. Moreover, if a temporary relocation of Equipment is required to accommodate the Premises Work, the parties shall determine the most technically suitable alternative location which will not impede the Premises Work. Notwithstanding the foregoing, Licensee shall move the Equipment back to its original location after the Premises Work is completed unless the parties agree to utilize the relocated area permanently.

(e) Licensor makes no warranty or representation that the Building or the Premises are suitable for Licensee's use, it being assumed that Licensee has investigated the feasibility of the Building and Premises for Licensee's business operations and use. Licensee has inspected the Premises and the Building and accepts the same "as is" (or has assumed the risk for failure to investigate) and agrees that Licensor is under no obligation to perform any work or provide any materials to prepare

the Premises or the Building for Licensee. Licensors shall have no responsibility for, or obligation or liability with respect to: (i) the reliability or continued operation of the Equipment or any other equipment installed in the Building in connection with this Agreement; or (ii) the suitability, sufficiency or compatibility of heating, ventilation, air conditioning, plumbing, electrical, fire protection, life, safety, security, public utility or other systems in the Building (whether as initially installed or as modified or replaced from time to time by Licensors in its sole discretion) for or with any components installed by Licensee pursuant to this Agreement or the use or operation thereof or the delivery of any Services by Licensee. Notwithstanding the foregoing, if the provisions of Section 1.14 of the Transaction-Specific Terms and Conditions of this Agreement are not stricken, the terms of such Section 1.14 shall supersede those in this Section 2(e).

(f) Licensors and Licensee acknowledge and agree that the relationship between them is solely that of independent contractors, and nothing shall be construed to constitute the parties as employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party, nor its employees, agents or representatives shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other.

(g) Licensors reserves the right to permit Tenants and other occupants of the Building to locate and operate telecommunications equipment in or on the Building, on behalf of itself or third parties.

(h) Except as may be otherwise set forth herein, absent Licensors's prior written consent, Licensee is expressly prohibited from using the Equipment to (i) provide Services to a tenant, occupant or licensee of another building or to any other third party including, but not limited to, the general public, (ii) program or control the operations of any other equipment of Licensee located other than at the Building without the prior written consent of Licensors, or (iii) provide co-location or interconnection services to third parties using the Premises or Equipment other than as necessary for Licensee to provide Services to Tenants.

### 3. Use

(a) Licensee shall not use the Premises for any purpose other than the Permitted Use.

(b) Licensee shall not use the Premises in any way that interferes with the use and enjoyment of the Building by: (i) Licensors, (ii) Tenants, or (iii) Existing Licensees. The operation of the Licensee's Equipment shall not interfere with the maintenance or operation of the Building, including but not limited to the roof, MATV, CATV or other video systems, HVAC systems, electronically controlled elevator systems, computers, telephone systems, or any other system serving the Premises and/or its occupants, or the operation of any radio or telecommunication equipment installed by or on behalf of Licensors, Existing Licensees and Tenants. Upon notice of any such interference, Licensee shall immediately cooperate with Licensors to identify the source of such interference and shall, within twenty-four (24) hours, cease all operations (except for testing as approved by Licensors) until the interference has been corrected to the satisfaction of the Licensors. Licensee shall be responsible for all costs associated with any tests deemed reasonably necessary to resolve any and all interference as set forth in this Agreement. If such interference has not been corrected within \_\_\_\_\_ ( ) days, Licensors may (i) require Licensee to remove the specific items from the Equipment causing such interference, or (ii) eliminate the interference at Licensee's expense. Licensee shall indemnify Licensors and hold Licensors harmless from all Claims arising from any interference.

(c) If the equipment of any Future Licensee causes interference, Licensors will direct the interfering party to take all steps necessary to correct and eliminate the interference. If Licensors or any of Licensors's Tenants or licensees or future tenants or licensees should cause irresolvable interference with the Equipment, Licensee may relocate the Equipment at its sole cost and expense or, subject to Licensors's approval not to be unreasonably withheld, delayed or conditioned, terminate this Agreement without further liability to Licensors. To the extent that Licensee's operations are not within the parameters of its FCC license, this protection from interference will not apply, and Licensee shall indemnify and defend Licensors from all Claims arising out of such unlicensed operations. In no

event shall Licensor have any liability or responsibility for any interference with Licensee's operations, except to the extent resulting from Licensor's intentional misconduct in violation of the covenant set forth above in this Section 3(c).

(d) Notwithstanding the foregoing, if an emergency situation exists which Licensor reasonably determines, in its sole discretion, to be attributable to the Equipment, upon written or verbal notice Licensee shall act diligently and expeditiously to remedy the emergency situation. Should Licensee fail to so remedy the emergency situation or should Licensor reasonably determine that the response time by Licensee is not adequate given the nature of the emergency, Licensor may then shut down the Equipment and Licensee shall have no recourse against Licensor as a result of such action.

(e) Licensee shall not allow any excessive or objectionable levels of noise to be generated by the Equipment during normal operations. Unless the Licensor gives written approval otherwise, all activities of Licensee at the Building, including, without limitation, construction and installation activities, which are noisy or otherwise disruptive to the operations of the Building or any Tenant, as determined by Licensor in its sole discretion, shall be conducted outside of Normal Business Hours.

#### 4. Service to Tenants

(a) Licensee shall provide Services to Tenants pursuant to a service agreement, which shall contain (i) provisions for mandatory expiration/termination at the end of the term of this Agreement, and (ii) provisions reasonably acceptable to Licensor whereby Tenant acknowledges that (1) Licensor is not a party to such agreement and Tenant waives and releases Licensor from any obligation or liability relating thereto, and (2) that any cessation or interruption in the provision of Services by Licensee does not constitute a default or constructive eviction by Licensor under the property lease between Tenant and Licensor. If Licensee provides Service to any Tenants, then, upon the expiration or earlier termination of this Agreement or of the service agreement between Licensee and any applicable Tenant, such Tenant shall be entitled to number portability and Licensee shall release and assign to such Tenant such Tenant's telephone number(s). Licensee shall cooperate reasonably at no cost to Licensee in the Tenant's efforts to successfully transfer the telephone numbers.

(b) Licensee shall not place or maintain any sign in or on the Building without Licensor's prior consent.

5. Licensee's Financial and Technical Capacity. Licensee represents and warrants that upon execution of this Agreement and during the term of this Agreement, Licensee shall have and maintain the financial and technical capacity and standards to perform its obligations under this Agreement as set forth in Exhibit H. Licensor may require Licensee to furnish current information demonstrating its financial and technical capacity from time to time, but no more than \_\_\_\_\_ during the License Term.

#### 6. Compliance With Law

(a) Licensee agrees to comply with all Applicable Laws, Work Plans, Building Rules and other contractual obligations with respect to the installation and operation of the Equipment, the Licensee's provision of Services, and the Building. Licensee shall obtain and keep in effect all required licenses, permits and other authorizations necessary to conduct Licensee's provision of Services (the "Permits") and deliver copies thereof to Licensor upon request. Upon request, Licensor agrees to cooperate with Licensee in obtaining any required Permits. Licensee shall also pay promptly when due all royalties or other fees due in connection with the operation of any of the Equipment. If compliance with this Section requires modifications or alterations of any Equipment, no modification or alteration shall be made without Licensor's prior written consent, which consent shall not be unreasonably withheld and may be granted on such reasonable terms and conditions as Licensor may determine.

(b) Licensee shall cooperate generally with Licensor and other carriers to permit the Building's rooftop to be and remain in compliance with all FCC and OSHA rules and regulations



relating to radio frequency emission levels and maximum permissible exposure, including but not limited to the rules and regulations adopted in FCC document OET 65 (which rules and regulations have also been adopted by OSHA). Licensee shall (A) reimburse Licensors for Licensee's pro rata share of the cost of conducting an annual survey to ensure that the Building's rooftop is in compliance with all applicable FCC and OSHA rules and regulations (a "Rooftop Survey"), and (B) to the extent Licensee's Equipment or the operation thereof directly or indirectly causes the Building's rooftop (or any section thereof) to not be in compliance with such rules and regulations, promptly remedy any such non-compliance in accordance with Licensors' directions and at Licensee's sole cost and expense. In the event that Licensee (x) relocates or makes any change to the Equipment located in the Rooftop /Space or (y) makes any change to any Equipment or operation thereof which directly or indirectly affects the operation of Licensee's Equipment located in the Rooftop Space, Licensors may, at its option, require that a new Rooftop Survey be conducted at Licensee's sole cost and expense by an EME firm approved by Licensors in its reasonable discretion (in addition to the annual Rooftop Survey described above). In the event Licensee believes that any of the Equipment in the Rooftop Space is excluded from coverage under FCC and OSHA rules and regulations, Licensee shall demonstrate to Licensors' reasonable satisfaction that any such Equipment is so excluded.

7. Construction.

(a) Licensee shall not install, alter, improve, maintain, or repair any Equipment in or on the Building unless and until such work is depicted in a work plan containing detailed specifications and drawings and any additional information required by Licensors, the form of which is attached hereto as Exhibit I (such work plan referred to hereinafter as a "Work Plan"), submitted to, and approved in writing by, Licensors (each such approved Work Plan, an "Approved Work Plan"); provided, however, that (i) Licensors shall not disapprove any Work Plan on the basis of any work depicted in Exhibits A, B, C or D; and (ii) routine maintenance and repairs, which do not involve connections to or work on, or otherwise adversely affect, equipment, cables, or other property of or at the Building, or of Tenants or other third parties, shall not require Licensors' prior approval of a Work Plan (although Licensee shall deliver to Licensors a revised Work Plan within \_\_\_\_\_ ( ) days after completion of such work to reflect any modifications to the previously effective Approved Work Plan necessitated by such maintenance and repairs).

(b) Licensors' approval of Work Plans for the installation, alteration, maintenance, improvement or repair of Equipment shall not be unreasonably withheld or delayed; provided, however, that (i) Licensors shall have the right to approve, in its sole discretion, Work Plans depicting the size, location, method of installation and configuration of Equipment and Work Plans for improvements or alterations to the Rooftop Space, if applicable, and may require screening at Licensee's expense, and (ii) the terms and conditions of the installation, alteration, maintenance, improvement or repair of any generator shall be set forth in a separate rider to this License, the form of which is attached hereto as Schedule B (the "Emergency Generator Rider") and any generator approved by Licensors, which approval may be granted, withheld or conditioned in Licensors' sole discretion, and may also be subject to payment of additional Fees with respect to any such generator, as determined by Licensors in its sole discretion and as set forth in the Generator Rider, and (iii) Licensors may condition its approval of any Work Plan relating to construction of Communications Spaces and Pathways on Licensee's agreement to core one or more core vertical paths (which may be greater than the size of the Communications Spaces and Pathways that Licensee may be entitled to use under this License).

(c) Licensors' failure to provide a written consent pursuant to this Section 7 shall under no circumstance be deemed to constitute an approval. Licensors' approval of any Work Plan or work performed pursuant thereto is not a representation that such installation of the Equipment is in compliance with all Applicable Laws or that it will not cause interference with other communications operations in the Building.

(d) If the parties execute the Work Plan Rider attached hereto as Schedule C, the terms of such Rider shall supersede the foregoing paragraphs (a)-(c).

(e) Licensee will notify Licensor at least \_\_\_\_\_ ( ) days prior to commencing Licensee's installation, and perform all work at times approved by Licensor in its reasonable discretion. Within \_\_\_\_\_ ( ) days after the complete execution of this Agreement, and in any event prior to the commencement of work, Licensee will, at its own cost and expense, deliver to Licensor a certificate confirming that any insurance required under this Agreement has been obtained and is in full force and effect.

(f) Licensee understands and agrees that the structural integrity of the load bearing capability of the roof of the Building, the moisture resistance of the building membrane, and the ability of Licensor to use all parts of the roof of the Building are of critical importance to Licensor. Licensee, therefore, agrees that Licensee shall not penetrate the roof membrane and that the specifications and plans that it will provide shall be of sufficient specificity to ensure that these concerns are protected.

(g) All installation and other work to be performed by Licensee hereunder will be done in such a manner as to minimize disruption of use of the Building by Licensor and Tenants and not to block access to or in any way obstruct, interfere with or hinder the use of the Building's loading docks, the sidewalks around the Building, or any entrance ways thereto, or interfere materially with, delay, or impose any additional expense upon Licensor in maintaining the Building. If such conditions shall occur, Licensee shall take immediate corrective action. Licensee agrees that installation and construction shall be performed in a safe, neat, professional and workmanlike manner, using generally accepted construction standards, consistent with such other reasonable requirements as may be imposed by Licensor. Licensee shall, at its sole cost and expense, repair any portion of the Building (including the surface of the Building) that is damaged by or during the installation, repair, removal, operation or replacement of the Equipment and caused by Licensee or any of its agents, representatives, employees, contractors, subcontractors or invitees. If Licensee fails to repair or refinish any such damage, Licensor may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licensor for all costs and expenses incurred in such repair or refinishing.

(h) Licensee shall bear all costs to run, maintain, repair and operate conduit through the Building to access Tenants from the Equipment, and to provide Services. Licensee shall, prior to connecting any of its customers to the Equipment, install a riser cabling system (the "Riser System") exclusively for its customers, if such a system is not already in place. Licensor may disapprove, in its sole and absolute discretion, any of Licensee's plans that indicate Licensee's intent to wire to Tenants on an individual basis without the use of a single Riser System.

(i) Licensee shall ensure that all Equipment, including cables, is identified with permanently marked, weather proof labels in each telephone closet through which cables pass, each antenna bracket, at the transmission line building entry point, at the interior wall feed-through or any other transmission line exit point, and at any transmitter combiner, duplexer or multifeed receive port, with Licensee's name, type of line, circuit number, and floor where cable originates and terminates, and other information as may be reasonably required by Licensor. Licensee shall, upon Licensor's written request, promptly provide Licensor a site diagram depicting Licensee's distributions system to all Tenants.

(j) Licensor shall have the right to approve all outside contractors performing any work relating to the installation, modification, maintenance or removal of the Equipment at the Building on behalf of Licensee. If Licensee intends to perform its own installation, modification, maintenance or removal work, it shall be subject to Licensor's written approval as a "contractor" hereunder, and Licensor's withholding of approval of Licensee as a contractor in accordance with this Agreement shall not relieve Licensee of its obligations hereunder.

(k) Licensee acknowledges that the Building is "AS IS" during the entire License Term and except as expressly set forth herein, Licensor has no obligation for any repair to the Building even if the condition of the Building changes during the License Term. Furthermore, Licensor may conduct any repair or maintenance to the Building or construct any improvements without the written consent of Licensee and without any liability to Licensee except to the extent that such repairs or work

materially and adversely impact Licensee's rights under this Agreement, in which event Licensor agrees to coordinate such work with Licensee in order to reasonably minimize such adverse impact and Licensee agrees to not unreasonably delay or obstruct its approval of such repair, maintenance or construction.

(l) After Licensee has completed Licensee's installation and provided written notice of such to Licensor, Licensor or Licensor's designated representative shall have the right, but not the obligation, to inspect Licensee's installation without unreasonable delay and either (i) approve Licensee's installation or (ii) provide Licensee, in writing, with a "punch list" setting forth those items which are not in compliance with Licensee's installation. Licensee shall have a reasonable time, not to exceed \_\_\_\_\_ ( ) days, to remedy such items contained on the "punch list".

#### 8. Maintenance Obligations

(a) Licensee shall, at Licensee's expense, keep and maintain the Premises in commercially reasonable condition and repair during the License Term. Licensee agrees to maintain the Equipment in proper operating condition and within industry accepted safety standards. All installations and operations in connection with this Agreement by Licensee will adhere to reasonable technical standards developed for the Building by Licensor as amended from time to time. Licensor assumes no responsibility for the licensing, operation and maintenance of the Equipment.

(b) All penetrations into any Building surfaces shall be sealed so as to prevent any water leakage. Licensor reserves the right to require Licensee to use a roofing contractor specified by Licensor to perform any work which may involve penetrations into the roof of the Building or may otherwise render the roof warranty void. Licensee, at its sole expense and risk, shall ensure that a physical inspection of the Rooftop Space occurs at intervals of no more than twelve (12) months and that this inspection includes a survey of structural integrity and a review and correction of any loose bolts, fittings or other appurtenances. Licensee shall provide a written certification of such inspections to Licensor not more than \_\_\_\_\_ ( ) days following each such inspection. In the absence of such a certification, Licensor shall have the right (but not the obligation) to conduct or arrange for such an inspection and corrective action and to charge Licensee for such costs.

(c) If Licensor determines that the Premises is not being maintained in the condition required by this Agreement, and without limiting Licensor's other rights and remedies under this Agreement, Licensor shall have the right, if Licensee fails to remedy the condition(s) identified by Licensor to the reasonable satisfaction of Licensor within \_\_\_\_\_ ( ) business days of receipt of notice thereof, or immediately in the event of an emergency, to take such action, at Licensee's expense, as Licensor reasonably deems necessary to restore the Premises to the condition required by this Agreement. In the event of an emergency, Licensor shall give to Licensee as much advance notice as reasonably possible of its intent to enter the Premises and, within \_\_\_\_\_ ( ) days following such entry, shall provide to Licensee a written report detailing the nature of such emergency and the corrective actions taken. Licensee shall pay to Licensor, on demand, Licensor's reasonable costs and expenses incurred pursuant to this Section 8.

#### 9. Access

(a) Licensee's authorized representatives shall have access to the Premises at all times, for the purposes of installing, maintaining, operating and repairing the Equipment, and Licensor further agrees to give Licensee ingress and egress to the Premises at all times during the term of this Agreement, including non-exclusive use of an elevator. It is agreed, however, that Licensee shall comply with Licensor's security procedures for the Building, and that only authorized engineers, employees or properly authorized contractors, subcontractors and agents of Licensee, other authorized regulatory inspectors or persons under their direct supervision and control will be permitted to enter the Premises, and only upon conditions set forth herein.

(b) Except in the event of an emergency, Licensee agrees to give at least \_\_\_\_\_ ( ) hours notice to Licensor of its intent to enter the Premises. At the time that such

notice is given, Licensee shall inform Licenser of the names of the persons who will be accessing the Premises, the reasons for entry, and the expected duration of the work to be performed. Licensee shall provide such information substantially in the form attached hereto as **Exhibit J** whenever feasible. In the event of an emergency, Licensee shall give to Licenser as much advance notice as reasonably possible of its intent to enter the Premises and, within \_\_\_\_\_ ( ) days following such entry, shall provide to Licenser a written report detailing the nature of such emergency and the corrective actions taken.

(c) Licensee shall not enter any area other than Premises without the consent of Licenser (or with respect to Tenant Areas, the consent of such Tenant). In addition, except in the case of an emergency, Licensee shall not enter or attempt access to any of the Building's air, electrical, mechanical or telecommunications risers, ducts, closets, conduits, duct work, rooms or other horizontal or vertical spaces in the Building, without notifying Licenser in writing at least \_\_\_\_\_ ( ) business days in advance. In the case of an emergency, Licensee may enter or seek access to such areas provided it uses its reasonable efforts to give Licenser at least \_\_\_\_\_ ( ) hours prior notice and provided that, if practicable, a Building security guard or engineer unlock, and accompany Licensee's employees into such areas (and Licenser will use its reasonable efforts to make such access available to Licensee on an expedited basis). Licensee also shall furnish Licenser, within \_\_\_\_\_ ( ) business days thereafter, a written report explaining all repairs and procedures which were conducted during any such emergency operations in sufficient detail to permit Licenser's engineers to evaluate same. If Licenser's engineers reasonably believe that such repairs need to be modified, Licensee shall make such necessary repairs at its own expense.

(d) Licenser and its representatives reserve the right to enter the Premises for any purpose. If any such entry is reasonably likely to disturb the rights granted to Licensee hereunder, then Licenser must give Licensee advance notice if reasonably possible before entry and use reasonable efforts to minimize any interference with Licensee's operations or Equipment. Notwithstanding the foregoing, Licenser shall incur no liability to Licensee for such entry, nor shall such entry constitute an abridgement of or interference with Licensee's rights or a termination of this Agreement, or entitle any abatement of fees therefor, provided that Licenser's entry is reasonable in duration and scope.

#### 10. Removal of the Equipment Upon Termination

(a) Upon expiration or earlier termination of this Agreement (the "Termination Date"), Licensee shall pay Licenser all amounts outstanding pursuant to this Agreement as of the Termination Date, and at Licensee's sole cost and expense, without liens, remove all Equipment and Licensee's personal property from the Building. Any property not so removed within \_\_\_\_\_ ( ) days after the Termination Date may, at Owner's sole option (i) be removed and stored by Licenser at Licensee's Expense or (ii) become the property of Licenser without compensation to Licensee. Further, Licensee agrees, at its sole cost and expense, to repair or refinish all damage caused by the operation or removal of Licenser's Equipment, excepting damage caused by ordinary wear and tear. If Licensee fails to repair or refinish any such damage, Licenser may, in its sole discretion, repair or refinish such damage and Licensee shall reimburse Licenser for all costs and expenses incurred in such repair or refinishing. Notwithstanding the foregoing, Licensee's Connecting Equipment (hereinafter defined) shall, at Owner's option and upon written notice to Licensee, become the property of Licenser and remain in the Building. If Licenser elects to retain some or all of Licensee's Connecting Equipment, Licensee shall execute a bill of sale or other document necessary to effect such transfer of ownership, at no additional cost or consideration from Owner to Licensee, within \_\_\_\_\_ ( ) days after receiving such written notice.

(b) Notwithstanding the foregoing, Licenser agrees that if Licensee requests permission to maintain the Equipment at the Building after the termination of this Agreement, Licenser shall not unreasonably withhold its consent thereto, provided Licensee continues to pay the License Fees then in effect, but in no event shall Licensee be entitled to maintain the Equipment at the Building for more than \_\_\_\_\_ ( ) days after the expiration or termination of this Agreement without the prior written consent of Licenser, which may be withheld or granted in Licenser's sole and absolute discretion.

(c) If Licensee fails to remove the Equipment and vacate the Premises within the time period set forth above, Licensee shall indemnify and hold harmless Licensors against and from any and all Claims asserted by third parties proximately caused by delay in obtaining possession of the Premises by Licensors or by any other licensee to whom Licensors may have licensed all or any part of the Building effective upon the expiration or termination of this Agreement. This indemnification shall survive any termination of this Agreement.

(d) Upon the expiration or earlier termination of this Agreement, Licensee agrees to use its reasonable best efforts to arrange for the conversion of all Tenant customers to service from another telecommunications service provider with little or no disruption of service.

#### 11. Cable Distribution System

(a) Licensors reserves the right to provide access to both existing and future telecommunications services and service providers by installing a central telecommunications cable distribution system ("CDS") in the Building, including a main demarcation frame ("MDF") for use by all competitive service providers in order to reach tenant demarcation points in the Building. If a CDS is installed, the MDF shall serve as the minimum point of entry ("MPOE") demarcation point for service providers. The MDF shall also serve as the origination point of the CDS. The tenant demarcation block on each floor of the Building will serve as the terminating point of the CDS on that floor. Licensors shall charge all competitive service providers (including Licensee) a fee for each CDS cable-pair used (the "CDS Fee") in accordance with Exhibit K, which will be attached hereto and incorporated herein as it may be amended from time to time if the CDS is installed by Licensors. If Licensors installs a CDS, it may, in its sole discretion, appoint a third party as its agent to own and/or manage the CDS.

(b) If Licensors installs a CDS:

(1) Licensors may, but is not obligated to, purchase from Licensee those portions of Licensee's cables, conduits, inner ducts and other connecting hardware ("**Connecting Equipment**") that Licensors, in its sole discretion, determines are necessary to incorporate into the CDS. The purchase price of such portions of Licensee's Connecting Equipment shall be an amount equal to the then "as is" fair market value as agreed to by the parties, or as determined by a third party reasonably acceptable to both parties who is experienced in the valuation of such equipment. Licensee shall, at Licensors's option and expense, remove any remaining Connecting Equipment that is not purchased by Licensors.

(2) Licensee shall, at Licensee's expense, relocate its existing services and demarcation facilities to the CDS;

(3) Licensee shall utilize the CDS for providing all service to Licensee's customers once Licensors notifies Licensee that the MDF is ready for use;

(4) Licensors agrees to allow Licensee a reasonable amount of time (not to exceed \_\_\_\_\_ ( ) days) for proper planning, engineering and cut-over in this regard. Cut-over to the MDF will be accomplished at times other than normal business hours, unless previously approved by Licensors.

(c) If Licensors installs a CDS, Licensors's sole responsibility in the event of interruption or other effects caused by malfunction, damage or destruction of the CDS shall be to repair or replace the CDS as necessary to eliminate the cause of malfunction or interruption, the cost of which shall be borne by Licensors, unless the problem was caused directly or indirectly by Licensee, its agents, representatives, employees or invitees. In limitation of the foregoing, Licensors's obligation to repair or replace the CDS shall apply only to the extent necessary to reach premises in the Building that are then used by Tenants after the malfunction, damage or destruction or that, if damaged or destroyed, will be again used by Tenants upon the completion of restoration or repair thereof. In no event shall Licensee have any right to make any claim against Licensors whatsoever for any damages, whether direct, indirect or consequential, in any circumstance. In the event of malfunction or, damage to, or

destruction of, the CDS, as Licensee's sole remedy, the License Fees and CDS Fee paid by Licensee under the Agreement shall equitably abate (to the degree related to the defect) from the date of such malfunction, damage or destruction until the date upon which Licensor completes its repair or replacement of the CDS ("**Completion Date**"), to the extent that Licensor is required to do so by this Agreement. The abated amount, to the extent already paid, shall be refunded to Licensee within \_\_\_\_\_ ( ) days of the Completion Date. Licensor shall promptly provide to Licensee the phone number(s) for the person or persons responsible for the operation and maintenance of the CDS. If the CDS malfunctions or becomes damaged or destroyed, and such event prohibits Licensee from providing services to its customers for a period of \_\_\_\_\_ ( ) days after such malfunction, damage, or destruction, Licensor shall use commercially reasonable efforts to provide an alternative location for Licensee to relocate its facilities, at Licensee's expense, so that Licensee may continue to provide its services. Upon completion of Licensor's restoration or repair of the CDS, Licensee shall, within \_\_\_\_\_ ( ) business days, return and re-connect its Equipment to the CDS. If (i) Licensor does not provide an alternative location for Licensee to relocate its facilities as described herein, and (ii) the MDF has not been repaired and is unsuitable for use by Licensee for a period of \_\_\_\_\_ ( ) days after its malfunction, damage, or destruction, then Licensee shall have the right to terminate this Agreement, said termination to take effect immediately upon written notice to Licensor.

(d) Notwithstanding the foregoing, if Licensor installs a CDS, Licensee may, in its sole option and within \_\_\_\_\_ ( ) days after such installation, terminate this Agreement upon written notice to Licensor.

## 12. Insurance, Release and Indemnity

(a) During the term of this Agreement, Licensee, at its sole cost and expense, shall keep in full force and effect a comprehensive commercial general liability insurance policy, including blanket contractual and completed operations coverage, with limits of at least \_\_\_\_\_ million dollars (\$\_\_\_\_,000,000.00) for bodily injury, including death, arising from any one occurrence, and "All Risk" or "Cause of Loss Special Form" property insurance of at least \_\_\_\_\_ million dollars (\$\_\_\_\_,000,000.00) for damage to property arising from any one occurrence for Equipment and all personal property.

(b) Licensee's insurance shall contain provisions providing that such insurance shall be primary insurance insofar as Licensor and Licensee are concerned, with any other insurance maintained by Licensor being excess and non-contributing with the insurance of Licensee required hereunder and providing coverage for the contractual liability of Licensee to indemnify Licensor pursuant to Section 12(f) below. All insurance policies shall be endorsed to include Licensor, the manager of the Building (the "**Building Manager**") and any other parties reasonably designated in writing by Licensor as additional insureds and shall provide that Licensor and any other parties reasonably designated in writing by Licensor will receive at least thirty (30) days prior written notice of any cancellation or material change in such insurance policy. Licensee shall, prior to the installation of the Equipment, furnish to Licensor or Building Manager a certificate of insurance confirming that the insurance coverage as specified herein is in full force and effect.

(c) All policies shall be written by an insurer having a policyholder rating ("**Best Rating**") of at least "A" or better and be assigned a financial size category of at least Class VIII as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, licensed to do business within the jurisdiction where the Building is located.

(d) Licensee's contractors must comply with the same insurance requirements defined in this Section and must produce, prior to commencing any testing, installation, repair, or maintenance work on the Premises, a certificate of insurance or a policy evidencing that the above-referenced insurances are maintained including, but not limited to, naming Licensor and Building Manager as additional insureds.

(e) Licensee hereby releases Licensor, Building Manager, and their respective agents, employees, officers, directors, shareholders, members and partners (collectively the "**Releasees**") from,